IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.504 OF2005

Vivek Parshottam Bajaj & anr. ... Appellants.
Versus.
Sailesh P.Shah HUF & others. ... Respondents.

Shri V.A.Thorat, Senior Counsel with Shri K.K.Tated for the Appellants.

Shri V.V.Tulzapurkar, Senior Counsel i/by M/s.Dhru & Co. for the Respondents Nos.1 to 4.

Ms.Geeta Joglekar for the Respondent No.5.

CORAM : ABHAY S. OKA, J.

DATED : 25th April, 2005.

P.C.:

1. Heard the leaned Counsel appearing for the parties. By the impugned Judgment and Order, ad-interim relief has been refused by the learned trial Judge in favour of the Apellants/Plaintiffs.

2. The prayers in the Notice of Motion taken out by the Appellants/Plaintiffs read thus:

(a) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Defendants by themselves, their servants , agents and/or any person or persons claiming through or under them from :

(i) dealing with, disposing off, alienating

encumbering, parting with possession or allowing any development or construction on the portion "A" as more particularly shown in the rough sketch at Exhibit "B" hereto, of plot bearing Survey No.27, Hissa No.2, C.T.S. No.961 situate and being at village Juhu;

(ii) submitting any plans for development or construction on the said portion "A" and/or for I.O.D, C.C. and/or from getting any plans and I.O.D./C.C., if granted, to get them renewed;

(iii) obstructing and interfering with the plaintiffs' full and free use of the ground floor and also the open space that has come to their share and also in parting of vehicles;

(b) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Defendant No.5 from granting any sanction of any plans in respect of the said plot of land and suit structure standing thereon without the written consent from the

plaintiffs therein.

3. At this stage it is not in dispute that the building plans have been sanctioned by the Municipal Corporation for further construction on the property in dispute. In the affidavit filed on behalf of the Respondents Nos.1 to 4 stated as under:

> "4.8 After the said Memorandum of Understanding dated 26th June 2003 was terminated due to the non-performance by the Appellants, the answering Respondents have entered into a Development Agreement dated 27th November 2004 with M/s.Dev Realtors. This Development Agreement has been duly registered with the office of the Sub-Registrar of Assurances on 27th December 2004. The Appellants are fully aware of the aforesaid and a copy of the said Development Agreement was also produced in the Hon'ble City Civil Court at the time of the ad-interim Application. The Appellants filed a Chamber Summons being Chamber Summons No.466 of 2005 in the aforesaid suit for impleading the Developer as a party Defendant to the suit. However, the aforesaid facts are once again completely suppressed by the Appellants from this Hon'ble Court."

Shri Tulzapurkar appearing for the Respondents Nos.1 to 4 stated that the work of construction will not be

undertaken by the Respondents Nos.1 to 4 and M/s.Dev Realtors will be carrying out construction. He states that as of today the construction has not started. It is not in dispute that the Appellants have taken out a Chamber Summons for impleading M/s.Dev Realtors as party Defendant to the suit filed by them. In view of this statement made in the affidavit and the statement made by Shri Tulzapurkar, learned Senior Counsel appearing for the Respondents Nos.1 to 4, the Appellants will have to seek appropriate relief against the said Developers.

4. At this stage Shri Thorat, the learned Senior Counsel appearing for the Appellants prays that the Appellant may be permitted to withdraw the Appeal with liberty to take out appropriate Notice of Motion for seeking appropriate injunction against the said Developers i.e. M/s.Dev Realtors. He states that all the contentions of the parties in the said Notice of Motion which is proposed to be taken out by the Appellant may be kept open. The request made by Shri Thorat is reasonable and hence the following order is passed:

(i) The Appeal is dismissed as withdrawn. Notwithstanding the dismissal of the Appeal, it will be open for the Appellants to take appropriate Notice of Motion for seeking appropriate interim relief against

M/s.Dev Realtors. If such a Notice of Motion is taken out, the same will be decided by the learned trial Judge on its own merits without being influenced by the tentative findings recorded by the learned trial Judge in the impugned Judgment and order.

(ii) No order as to costs.

Judge.